



31 DEC 2002

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In re Application of :
HELARD, Jean-Francois :
PCT No.: PCT/FR00/02555 : DECISION ON REQUEST
U.S. Application No.: 10/088,284 : UNDER 37 CFR 1.497(d)
International Filing Date: 14 September 2000 :
Priority Date: 14 September 1999 :
Attorney's Docket No.: F40.12-0004 :
For: METHOD FOR EQUALISATION IN RECEIVERS :
USING A COMBINATION OF MODULATION :
TECHNIQUES WITH MULTIPLE CARRIERS AND :
WITH MULTIPLE ACCESS BY CODE DIVISION :

This decision is issued in response to the "Petition For Correction Of Inventorship Under 37 CFR 1.47(d)" filed 13 August 2002, which has been treated as a request under 37 CFR 1.497(d) to correct inventorship. Applicants have paid the required fee.

BACKGROUND

On 14 September 2000, applicants filed international application PCT/FR00/02555 which designated the United States. On 22 March 2001, a copy of the international application was communicated to the USPTO by the International Bureau ("IB").

On 23 February 2001, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the international filing date. As a result, the deadline for submission of the basic national fee was extended to expire thirty months from the international filing date, i.e., 14 March 2002.

On 13 March 2002, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 30 May 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements indicating that an oath or declaration in compliance with 37 CFR 1.497, the \$130 surcharge for filing the declaration after the thirty month deadline, a proper translation of the international application (and specifically, the drawings therein), and the \$130 processing fee for filing the translation after the thirty month deadline, were required. The Notification also informed applicants that the failure to submit a proper response within two months of the date of the Notification would result in abandonment of the application.

On 13 August 2002, applicants filed a "Response To Notice Of Missing Requirements" which included the petition considered herein. The petition seeks to add an additional inventor not named on the international application, Jean-Yves Baudais, asserting that Mr. Baudais was omitted from the international application without any deceptive intent. The petition is treated below under 37 CFR 1.497(d).

It is noted that the 13 August 2002 submission also included a separate page described as an "English Translation Of Figures." However, as discussed below, this translation is not in an acceptable form.

DISCUSSION

A. Request Under 37 CFR 1.497(d)

The petition to correct inventorship seeks to add Jean-Yves Baudais as an inventor. The petition asserts that this correction is appropriate because Mr. Baudais was incorrectly left off the international application, and this error occurred without deceptive intent.

37 CFR 1.497(d) states:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by:

- (1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;
- (2) The processing fee set forth in § 1.17(I); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignees (see § 3.73(b) of this chapter).

Here, as noted above, the declaration filed on 13 August 2002 names an inventive entity different from that set forth in the international application. Specifically, it includes one inventor (Jean-Yves Baudais) who was not listed as inventor on the international application. Accordingly, before the declaration filed on 13 August 2002 can be accepted, applicants must submit the materials set forth in 37 CFR 1.497(d).

A review of the materials filed by applicants' on 13 August 2002 reveals that this submission does not satisfy all the requirements of 37 CFR 1.497(d). Specifically, item (3) has not been satisfied. Applicants state in the attached "Consent" form that the corporate assignees consent to the addition of Mr. Baudais as an inventor. However, the consent is not in the form required by 37 CFR 3.73(b) (see MPEP § 324). Specifically, the submission is not accompanied by a copy of the recorded assignment, nor does it contain a specific reference to where this assignment can be located (i.e., reel and frame number).

Before the declaration filed on 13 August 2002 may be accepted as complying with 37 CFR 1.497, applicants must submit the written consent of the assignee in the form set forth in 37 CFR 3.73(b), as required by 37 CFR 1.497(d)(3).

Because applicants have failed to satisfy all the requirements of 37 CFR 1.497(d), the request to correct inventorship cannot be granted at this time. The declaration filed on 13 August 2002 is therefore defective under 37 CFR 1.497 for failure to properly identify all the inventors currently on record for this application.

B. Translation Of Drawings

As noted above, applicants have submitted a separate page containing a translation of language contained in the drawings. However, this translation is not in an acceptable format (i.e., new drawings or translations pasted directly over the foreign text in the drawings; see PCT Rule 49.5(d)). Accordingly, applicants' 13 August 2002 submission did not satisfy the requirement that a complete translation of the international application be submitted.

CONCLUSION

The request under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

The declaration filed on 13 August 2002 is defective. In order to make the change of inventorship required to render the declaration acceptable, applicants must submit the materials required by 37 CFR 1.497(d), as discussed above.

In addition, applicants' 13 August 2002 submission failed to satisfy the translation requirement with respect to the drawings in the international application. Applicants must submit new drawings containing the English translation of the language thereon, as discussed above.

A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Failure to file a timely and proper response will result in abandonment of the application.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

A handwritten signature in black ink, appearing to read 'RMR', is positioned above the typed name.

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